

**July 30, 2009 Minutes of
Bigfork Land Use Advisory Committee
Bethany Lutheran Church**

Committee members present: John Bourquin, Shelley Gonzales, Gary Ridderhoff, Al Johnson, Darrel Coverdell, Chuck Gough, Paul Guerrant, Sue Hanson and 6 members of the public.

Chairman Gonzales called the meeting to order at 4: 05 pm.

The Agenda was adopted as presented (m/sc Ridderhoff/Gough) – unanimous.

Minutes of the June 25, 2009 meeting were approved as mailed - unanimous. (m/sc Guerrant/Gough)

ADMINISTRATOR’S REPORT:

A. Sign-in Sheet: Reminder to the public of the availability of BLUAC minutes through email and BSC website bigforksteering.org/.

B. Application status: County status on previous pending applications: Hugh Yates-Board of Adjustment approved the application with all recommendations with the exception of recommended hours. The Montana Liquor Board regulates hours. The Board of Adjustment approved Bigfork Fire District application. The Commissioners approved application for Mill Creek Estates PUD on July 9, 2009.

APPLICATIONS:

A. Touris/Sneed zone change (FZC 09-03): A zone change request in the Bigfork Zoning District by Michael D. and Patricia A. Touris and William L. Sneed III from SAG-5 (Suburban Agricultural) to I-1 (Light Industrial). The property is located off Montana Highway 83.

Staff: Alex Hogle presented the application and noted that a history of review of this property indicated that it was not met favorably as to conforming to the BNP. Flathead County Commissioners recently made a change to the BNP Future Land Use Map for this property. The property is surrounded by some conforming and non-conforming uses. The commercial use at the corner of Hwy 35 and Hwy 83 is zoned B-2 which conforms to zoning. Adjacent properties of United Tool and Martel Construction are non-conforming properties established before the 1993 BNP. The owner of TR 2 (Touris) wants to operate a plumbing business. Touris believes the property is not suitable for residential use and too small for agricultural uses. TR 2-D (Sneed) wants to bring the property into compliance with appropriate zoning. Owner is concerned if property changes hands and does not meet the 180 days of continued use the property would lose the non-compliant grandfathered use. Hogle covered the permitted uses for Light Industrial and explained the setback would be 40’ because it faces a major arterial. The Planning Office has received one letter of opposition from Marguerite Kaminski, a residential property to the north of these properties. The letter expresses concern regarding property values and proximity to industrial uses. Staff has concerns that potential adjacent undeveloped properties may seek the same designation and represents the possibility of strip development and sprawl. The office has received no comments from the Bigfork Water and Sewer District, MDOT or parks department. Staff makes the following recommendation: “Staff supports re-zoning of the subject properties to permit light industrial uses. Based on the review of the 12 criteria used to evaluate zoning district amendments, Staff recommends that the Flathead County Planning Board adopt staff report

FZC-09-03 as Findings of Fact and forward a recommendation of approval to the County Commission to amend the zoning of the subject properties. Staff strongly recommends a more appropriate implementation of both the map and the text of the Bigfork Neighborhood Plan would be I-IH Light Industrial Highway.”

Staff also noted the question is raised “does bringing non-conforming uses into conformity make sense?”

Johnson: Can the applicants of the two parcels be considered separately? **A.** The governing body could recommend/add findings of fact that one or other property does not conform. I notice in the petition of 91 signatures that many have Kalispell or Whitefish addresses.

Guerrant: With the Map amendment made by the Commissioners, did they seek the council of the Planning Office? **A.** Not aware of that. In the range of designations in the BNP, it does not define I-I-H zoning. I’m also concerned about spot zoning.

Gough: Can the 7500’ lots be subdivided without local review? **A.** Yes. If approved there could be exemptions to subdivision, boundary line adjustments or family transfers, which would sidestep county review. Am I correct that the I-I-H zoning does not allow for auto salvage businesses? **A.** Correct. I think the 91 signatures should be identified as to how many are actually from the Bigfork zoning district. **A.** Petitions are not necessarily considered.

Bourquin: The petition wording is not specific as to what the zoning would be changed to. What is there to prevent numerous businesses on the 7500’ lots owned by the landowner? **A.** Some uses would apply to condominium uses.

Coverdell: The Planning Office recommended denial of the application before the Future Land Use Map was changed. Why would it recommend approval now? **A.** I did not review the previous application and did not feel there were enough issues to recommend denial.

Bourquin: Most of the letters in support of the application refer to commercial use not industrial uses. There is some obvious confusion by supporters.

Gonzales: the applicant has never clarified the intended use of the property. **A.** Often applicants want options.

Johnson: Has the applicant consulted with the Planning Office for other options to I-I? **A.** Not to my knowledge. We have had two applications in the past where the applicant requested inappropriate zone changes. After BLUAC discussion with the applicants and the Planning Office, it was determined that there were alternative changes more appropriate for their uses. It’s troubling that applicants are not made aware of options. I think this is a drastic departure from the present SAG-5 zoning. **A.** We certainly encourage you to recommend specific changes in the language of the staff report that you deem necessary.

Applicant: In the absence of both Touris and Sneed, Erica Wirtala presented the application on behalf of the applicant. She noted they had waited the required year to reapply. We could not apply for a land use amendment because the BNP update took so long to complete and had not been approved. We did discuss alternatives with the Planning Office staff and did not find an alternative suitable for the planned uses of the applicant. We cannot comply with Conditional Use under SAG-5 because of 4.07 #1. Spot zoning doesn’t apply in our case because there are two landowners. Mr. Touris walked door-to-door on Shawnee Drive to ask residents to support the zone change. The point of the petition is to show a lot of support in the community. Mr. Sneed is concerned that if his property burns down he would lose the non-conforming status. Both properties have one approved approach to MT 83 from MDOT. The property cannot meet the setback standards for I-I-H.

Staff: Corrected Wirtala on the setback statement. There is an exclusion for existing buildings for

setback requirements with I-I-H.

Wirtala stated that further subdivision on the lots would be considered a minor subdivision and would be reviewed by BLUAC.

Hanson: Corrected Wirtala-minor subdivisions do not require review by BLUAC.

Gough: Did you consider B-2? **A.** No

Gonzales: For the record, you stated you could not apply for a land use map amendment because the BNP was not completed. During the process of updating the BNP, there were two (2) land use map amendments approved (Saddlehorn and Snaff). Clearly, there are some inconsistencies in your statements.

Johnson: Other than section 4.07 #1, would the applicant be willing to comply with 2-5? **A.** No answer.

Bourquin: You stated that spot zoning does not apply because there are two owners. Actually, the spot zoning statute states “one or a few land owners” not one. To staff, were you able to identify the property line for determining setback requirements? **A.** Not specifically. I used the GIS maps to determine the right of way boundaries and looked at fence lines. I did not use a certified survey but determined the “best guess” was 98’. The setback exemption would apply for I-I-H.

Johnson: I’m still unclear why staff would not advise the applicant to apply for a Conditional Use under SAG-5 zoning for the purposes he has stated. Certainly the Administrative Conditional Use Permit would apply here. **A.** Suggest you discuss this with Jeff Harris. To applicant, would you be willing to withdraw the application to seek another option? **A.** Can’t speak for my client at this time.

Public Agencies – None

Public Comment - None

BLUAC:

Gonzales: Any comments from staff?

Staff: Hogle asked to correct the statement by Wirtala regarding fire damage. In case of a fire, a non-conforming business may reconstruct the original business but may not add more non-conforming uses. Also, the Conditional Uses she has referred to are not adjacent to this property.

Coverdell: I think it is obvious what the Commissioners will do with this application in light of their past actions. I do not agree with this type of zoning in this area.

Gough: I feel like we’re locked in because of the Commissioners action. I do think I-I-H is most appropriate if the change has to be made.

Ridderhoff: Agree with Gough.

Guerrant: Agree. The Future Land Use Map is changed so let’s move on. I do think I-I-H is more appropriate.

Gonzales: I do appreciate the thoroughness of staff with this application. The report is complete and well beyond what we are used to seeing.

Bourquin: I move to add Finding of Fact: “Of the nine letters submitted in support of the applicant, five (5) refer to “commercial” use rather than Light Industrial. Of the 91 signatures on the petition submitted by the applicant in support of “zone change proposed by Mike Touris & Chuck Sneed” fifty-four (54) showed residences outside the Bigfork Zoning District.” Coverdell seconded the motion. Motion passed unanimously.

Johnson: I strongly encourage the committee to recommend denial of the application and recommend the applicant apply for a Conditional Use under SAG-5 zoning.

Gonzales: I move to add Finding of Fact: “The staff recommended I-1H (Light Industrial-Highway) designation, permitted uses, conditional uses, bulk and dimensional requirements and additional design standards should be emphasized and would better comply with the intent, goals and policies of the Bigfork Neighborhood Plan.” Motion seconded by Gough. Motion passed unanimously.

Johnson: I move to add Finding of Fact: “On June 2, 2009, the Flathead County Commissioners unilaterally made a significant change to the Bigfork Neighborhood Plan’s Future Land Use Map. This change was made at the request of the owner(s) of two specific parcels. The original SAG-5 designation was changed to IL (Industrial). This was done in spite of the fact that all surrounding property is designated AG and zoned SAG-5. Moreover, the change from SAG-5 to I1 (Light Industrial) entails a drastic modification of conceivable land uses and zoning regulations. This drastic and singular departure was made in contravention of public notice requirements, the mandated opportunity for public comment and input, and review by BLUAC and the Flathead County Planning Board. In addition, this modification bypasses the required process for updating Neighborhood Plans as delineated in the Flathead County Growth Policy.” Motion seconded by Bourquin.

Guerrant: The letter from the attorney we consulted stated the issue could have been handled better but was not illegal.

Motion carried with two dissenting (Guerrant-Ridderhoff)

Gough: Move BLUAC recommend approval of the application for I-1H (Light Industrial-Highway) zone change rather than I-1 (Light Industrial). Coverdell seconded the motion. Motion carried with two dissenting (Bourquin-Johnson).

The application will be heard by the Flathead County Planning Board, Flathead County Planning & Zoning Office, 1035 First Avenue West, Kalispell, on August 12, 2009, at 6:00 p.m.

OLD BUSINESS:

A. Review of BLUAC Policies & Procedures

A review has been completed. Gonzales moved to approve the BLUAC Policies & Procedures without changes. Motion seconded by Bourquin. Motion carried unanimously.

NEW BUSINESS:

A. Report by Bigfork Steering Committee: No report.

B. Interest in Creating Sub-Committees per BNP:

Committee members suggested postponing the discussion for one month. Sub-Committees to be considered are:

- Architectural Design Committee
- Noise & Visual Pollution
- Information Awareness

C. Community Participation on County Boards:

Committee members noted concern that the Bigfork area is not represented on the Planning Board. Efforts should be made to make the public aware of the opportunity for serving on the County level.

PUBLIC COMMENT: None

Meeting was adjourned at 6:30 p.m.

Sue Hanson
BLUAC Secretary